



IN THE MATTER OF:

Respondent.

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ALS NO: S-11123

This matter is ready for a Recommended Order and Decision pursuant to the Illinois Human Rights Act (775 ILCS 5/1-101 et seq.). A public hearing was held before me in Springfield, Illinois on July 11, 2000. The parties have filed their post-hearing briefs. Accordingly, this matter is ripe for a decision.

In the instant Complaint, Complainant asserts that she was the victim of sexual harassment when Respondent, who served as a personnel officer at Complainant's place of employment, made repeated and unwanted oral and written requests for a sexual relationship throughout her tenure at Respondent's workplace. Respondent, however, contends that Complainant failed to establish a *prima facie* case of sexual harassment in that Complainant failed to prove that she subjectively viewed his conduct towards her as unwelcome.

Based upon the record in this matter, I make the following findings of fact:

1. At some point before August 20, 1998, Complainant, Teresa Shelton, applied for employment with Intraplant Maintenance Corporation (IPM). IPM supplied

employees to various plants in Illinois and Iowa, including the Mitsubishi plant in Bloomington, Illinois.

2. As part of the application process, Complainant's resume was turned over to Respondent, Steve Smith. At all times pertinent to this case, Respondent served as a personnel manager of IPM. As part of his duties as a personnel manager, Respondent had the authority to hire employees and to order criminal background and drug tests on potential employees.

3. On August 20, 1998, Complainant had her first interview with Respondent. After the interview, Respondent telephoned Complainant to set up a second interview and to obtain Complainant's driver's license for the purpose of conducting a criminal background check. During this conversation, Respondent requested that they meet the next day for lunch, and that the meeting would be on a personal, as opposed to a job-related level. Complainant agreed to this request.

4. On August 21, 1998, Complainant and Respondent met at noon in Complainant's truck in a parking lot of a Bloomington hospital and went to Jumer's, a Bloomington restaurant. After lunch, Complainant and Respondent drove back to the hospital parking lot where they stayed until 2:30 p.m. and exchanged several kisses.

5. During the week of August 23, 1998, Complainant and Respondent met on two occasions at the hospital parking lot. On each occasion, Complainant and Respondent traveled to Funk's Grove where they spent some time in a secluded area of the park exchanging several kisses.

6. At some point during the week of August 31, 1998, Respondent informed Complainant that she had passed her criminal background check. At that time, Complainant then came into Respondent's office for orientation. After Respondent closed the door Complainant and Respondent kissed several times during the meeting.

Complainant also called Respondent on three occasions during this week. Two of these calls were made to Respondent's pager number. Complainant and Respondent spent time during this week in a Bloomington or Funk's Grove park. During this week, Respondent also met Complainant in his truck outside the home of Complainant's parents in Shirley, Illinois where Complainant was living.

7. Respondent hired Complainant at some point before September 7, 1998. On September 7, 1998 Complainant was assigned by IPM to the production line at a Mitsubishi plant. At this time, Respondent asked Complainant whether she wanted to continue their personal relationship, and Complainant agreed to continue the relationship and began making telephone calls to Respondent's pager. During the first week of her employment, Complainant called Respondent's pager once on September 7, 1998, and four times on September 11, 1998.

8. From September 7 to September 17, 1998, Respondent began showing up at the Mitsubishi plant during Complainant's 11:00 p.m. to 7:00 a.m. shift. Typically, Respondent had a regular shift at IPM's East Peoria office ending at approximately 4:00 p.m. While Respondent's job duties required that he make infrequent trips to various plants where IPM sent its workers, Respondent spent more time at the Mitsubishi plant than he had done in the past. During these visits to the Mitsubishi plant, Complainant's supervisors observed Complainant and Respondent laughing and giggling. Respondent also met Complainant near her parent's home during this time.

9. Between September 7 and 17, 1998, Respondent hand-delivered at the Mitsubishi plant two notes to Complainant which attempted to express his feelings toward her. In the first note, Respondent thanked Complainant for the "best 2 hours [he] had this week", and indicated several times that he "loved" Complainant. The second note urged Complainant to take a trip with him to Iowa and asked Complainant whether

she was seeing someone else. Respondent additionally told Complainant in the note that her “touch” and “scent” the prior evening “drove” [him] crazy”. Complainant had also called Respondent on his pager on September 14, 15, and 16 1998.

10. Between September 19 and 24, 1998, Respondent drafted two more notes to Complainant which were delivered to her at the Mitsubishi plant. In the first of these notes, Respondent stated that he loved Complainant and promised that Complainant would have a great night of sex in spite of the fact that he was “not a ‘BIG’ stud” [emphasis in the original]. In the second note, dated September 24, 1998, Respondent thanked Complainant for calling him that day and asked if they could spend some time together on Saturday evening. Complainant called Respondent’s pager on September 18, 20, 21(twice) and 24, 1998.

11. From the beginning of Complainant’s employment at IPM through September 30, 1998, Gino Zabata served as a supervisor of the IPM work force at the Mitsubishi plant. While Zabata was not Complainant’s supervisor, he too noticed that Respondent had been coming to the plant and spending time with Complainant. Zabata began asking Complainant about her relationship with Respondent, and Complainant told him about her lunches, episodes in a park and telephone calls with Respondent. After hearing Complainant’s stories about her relationship with Respondent, Zabata urged Complainant to tell Mary Price, her supervisor, about Respondent’s conduct. Zabata’s motive for urging Complainant to make a complaint against Respondent was based both on a belief that Respondent’s behavior toward Complainant was not professional and on a hope that any complaint against Respondent would cool Complainant’s relationship with Respondent and help Zabata in his efforts to strike up a relationship with Complainant.

12. After speaking with Zabata, Complainant made an informal complaint about Respondent's conduct on September 30, 1998. In the meantime, Complainant called Respondent's pager on September 28 and 29, 1998.

13. After receiving the informal complaint, John LaReau, the President of IPM, scheduled separate information gathering sessions for Complainant, Price and Respondent for the purpose of conducting an investigation. Respondent and Price met with LaReau on October 8, 1998, but Complainant did not appear at her scheduled time. LaReau made a second appointment for Complainant's interview, but Complainant also failed to make that appointment as well.

14. On October 15, 1998, LaReau drafted a memorandum noting Complainant's failure to show-up at her scheduled interview times to discuss her informal complaint against Respondent. LaReau indicated that he would not take further action due to Complainant's lack of cooperation, but nevertheless instructed both Complainant and Respondent to not have any further contact with each other. Complainant's supervisor hand-delivered a copy of this memorandum to Complainant, and Respondent received notice of LaReau's prohibition of further contact with Complainant on October 22, 1998. From September 30, 1998 to October 21, 1998, Complainant called Respondent's pager a total of sixteen times, twice on September 30, 1998 and on October 5, 1998.

15. From October 22, 1998 to November 6, 1998, both Complainant and Respondent generally adhered to LaReau's instructions not to have contact with each other, and Complainant called Respondent only once on his pager on October 28, 1998.

16. On November 6, 1998, Respondent sent a letter to Complainant's home indicating fifteen times that he missed Complainant. Respondent also stated that he loved Complainant and hoped that she would call him.

17. On November 7, 1998, Respondent mailed five "Hallmark Expressions" cards to Complainant. Each card expressed a romantic message. In one card, Respondent's printed message stated:

"I'm so lonesome for you. These cards express the feelings I have for you. I'm not and I won't give up on you. Not until you can meaningfully look in my eyes and tell me you want to forget me. Love ya Steve"

The handwritten text in this card was a reference to a conversation that Complainant had with Respondent in October of 1998 when Complainant denied that she wanted their relationship to end.

18. On approximately November 18, 1998, Complainant and Zabata were having a conversation about Complainant's fear that she might be going to jail, and that she needed to raise \$2,500 for her bail bond. During this conversation, Complainant told Zabata of a plan to have Respondent help her obtain the \$2,500.

19. On November 19, 1998, Complainant had a conversation with Price about an incident where Complainant spent most of the day with Respondent picking up a golf cart. The time spent with Respondent caused Complainant to not show-up for work later in the day. Complainant had previously mentioned the incident to Zabata who in turn urged Complainant to tell Price.

20. Complainant telephoned Respondent on his pager on November 22, 23, 24, and 25, 1998. As with all of Complainant's telephone calls placed to Respondent on his pager, Complainant left a "911" code which told Respondent that Complainant wished to speak with him. On November 22, 1998, Complainant paged Respondent for the purpose of asking him for \$187 which she claimed was needed to take her furniture out of storage. Respondent gave Complainant \$187 on November 23, 1998.

21. Complainant continued to call Complainant's pager nine times between December 1 to December 22, 1998, with Complainant calling Respondent on his pager

twice on December 10, 1998 and on December 22, 1998. On December 23, 1998, Complainant gave Price a two week notice, claiming that she needed a different job because the pay was not adequate at IPM. Complainant telephoned Respondent on his pager on December 23, 25 and 28, 1998 and also called Respondent on his home phone on December 26, 1998.

22. Around January 1, 1999, Complainant began to have second thoughts about quitting IPM and began to solicit Respondent's help in getting IPM upper management to rescind her notice. During this process Complainant telephoned Respondent on his pager once on January 4, 1999, four times on January 5, 1999, and four times on January 6, 1999. Complainant also telephoned Respondent on an IPM telephone line four times on January 5, 1999 and twice on January 6, 1999.

23. On January 6, 1999, Complainant arrived at work at the usual time, but was sent home by Price, who had refused to rescind Complainant's two week notice to quit her job. When Complainant left the Mitsubishi plant on that day, she sat for awhile in Respondent's truck. During this conversation Complainant stated that she was upset because Price had terminated her. Arrangements were then made for Respondent to telephone Complainant on the next day.

24. On January 7, 1999, Respondent telephoned Complainant. During this conversation Complainant asked if Respondent wanted to see her more often, and Respondent responded that he did. Beginning on January 7, 1999 and through January 31, 1999, Complainant telephoned Respondent twenty-five times. All but four of these telephone calls were made to Respondent's pager. Of the calls made to Respondent's pager, Complainant telephoned Respondent three times on January 7, 1999, twice on January 8, 1999, twice on January 9, 1999, four times on January 20, 1999, twice on January 22, 1999, twice on January 24, 1999, and four times on January 25, 1999.

25. At some point during the week of January 17, 1999, Complainant was arrested on an outstanding bench warrant. At some point thereafter, John Shea, Complainant's roommate, asked both Respondent and Zabata to help pay Complainant's \$2,500 bail bond. Respondent agreed to loan Complainant \$200 while Zabata agreed to provide \$1,000.

26. Prior to February 2, 1999, Zabata urged Complainant to file a charge of discrimination against Respondent. On February 2, 1999, Zabata drove Complainant to the Department of Human Rights in order to file a Charge of Discrimination. During the time that Complainant was filling out the Department's questionnaire, Complainant initially put Price's name in the "Respondent's" box and listed Zabata and another individual as a witness. Complainant then went back to the Respondent's box and told Zabata that she was having a hard time putting Respondent's name in the box because she believed that Respondent was "a nice guy". After spending approximately two to three hours at the Department, Complainant signed a sworn Charge of Discrimination listing Price, Respondent and Zabata as Respondents. In addition to the allegations of sexual harassment levied against Respondent, Complainant also asserted that Zabata was guilty of sexual harassment by making repeated requests for a long term relationship including marriage. Ultimately, Complainant withdrew the charge of sexual harassment against Zabata, and all charges against IPM were dismissed for lack of substantial evidence.

27. On February 5, 1999 Complainant met with Respondent and told him that she had filed a charge of sexual harassment against him, but that she limited the time frame to November 1998 because she did not really want to file anything against him and believed that the November time frame would be consistent with her informal



complaint. Complainant called Respondent's pager once a day on February 1 through 5, 1999.

28. On February 8, 1999, Complainant met Respondent at a McDonald's restaurant in Bloomington, Illinois. During this visit, Complainant stated that she needed to borrow \$80 from a third-party. When Respondent indicated that he would be willing to give the money to her, Complainant initially refused the offer, but eventually invited Respondent to stick the money down her pants.

29. On February 12, 1999, Respondent met Complainant at a Bloomington mall. After Respondent and Complainant drove back to Complainant's apartment in separate cars, Respondent waited outside until he learned from the Bloomington police, who had arrived at the scene, that Complainant had claimed that Respondent was harassing her. Respondent promptly left the area.

30. Respondent was terminated by IPM in March of 1999 due to management's perception that Respondent had been insubordinate for disregarding its directive not to contact Complainant after October 22, 1998.

### **Conclusions of Law**

1. Complainant is an "employee" as that term is defined under the Human Rights Act.

2. Respondent is an "employee" as that term is defined under the Human Rights Act.

3. Complainant failed to establish a *prima facie* case of sexual harassment in that Complainant failed to prove by a preponderance of the evidence that she subjectively believed that Respondent's conduct towards her was unwelcome.

### **Determination**

Complainant has failed to prove by a preponderance of the evidence a *prima facie* case of sexual harassment under section 2-102(D) of the Human Rights Act in that Complainant failed to establish that Respondent's conduct was subjectively unwelcome.

### **Discussion**

Section 2-102(D) of the Human Rights Act (775 ILCS 5/2-102(D)) provides that it is a civil rights violation "[f]or any ...employee...to engage in sexual harassment." The Act further defines sexual harassment as "any unwelcome sexual advances or requests for sexual favors or conduct of a sexual nature when... (3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment."<sup>1</sup> The Commission has declared that there is no "bright line" test for determining what behavior will lead to liability under a sexual harassment theory and has charged the administrative law judge with assessing not only what was done in the workplace, but how it was done in relationship to the total working environment. (See, **Robinson v. Jewel Food Stores**, 29 Ill. HRC Rep. 198, 204 (1986).) Ultimately, however, the threshold issue in any sexual harassment case is whether the instances of harassment alleged by the complainant rise to a level of hostility so as to be considered actionable conduct. (See, **Scott v. Sears, Roebuck & Co.**, 798 F.2d 210 (7<sup>th</sup> Cir. 1986).) According to the United States Supreme Court in **Harris v. Forklift Sys., Inc.**, 510 U.S. 17, 126 L. Ed. 2d 295, 114 S. Ct. 367, 370 (1993), a cause of action for sexual harassment arises, at least in a Title VII case, "[w]hen the work-place is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment".

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<sup>1</sup> While there are other types of conduct prohibited under section 2-102(D), Complainant here has not alleged or argued that Respondent's conduct was tantamount to a *quid pro quo* type of harassment.

In Harris, the court examined a non-exhaustive list of factors relevant to the question of whether a work environment has been rendered hostile or abusive. Included in the Court's significant factors are: (1) the frequency of the discriminatory conduct; (2) the severity of the conduct; (3) the physically threatening or humiliating nature of the conduct; and (4) the interference that the conduct has on the employee's work performance. (Harris, 114 S.Ct. at 371.) Moreover, Harris teaches that any evaluation of the relevant factors be from both the objective viewpoint of a reasonable person as to whether the working environment is hostile or abusive, and from the subjective viewpoint of the employee as to whether the conduct is unwelcome. (Harris, 114 S.Ct. at 370.) The Commission has used a similar standard for evaluating sexual harassment claims under the Human Rights Act. See, Kauling-Schoen v. Silhouette American Health Spas, \_\_\_ Ill. HRC Rep. \_\_\_ (1986SF0177, February 8, 1993), slip op. at p. 13.

The heart of this case centers around whether Complainant subjectively viewed Respondent's conduct towards her as unwelcome. At the public hearing Complainant denied having any sort of personal relationship with Respondent, denied ever paging Respondent to talk about personal matters before January of 1999, and denied reciprocating Respondent's romantic overtures both before and after she filed her informal complaint of sexual harassment. Complainant's denials, though, took place before she was confronted with telephone records indicating a well-defined pattern of Complainant calling Respondent on his pager. In her brief, Complainant has taken a slightly different stance, arguing that even if she had responded to Respondent's overtures in August and September of 1998, she is still entitled to a finding in her favor since: (1) she sought to end the relationship by filing an informal complaint of sexual harassment against Respondent on September 30, 1998; and (2) Respondent ignored IPM's directive to refrain from having contact with her by sending unsolicited cards and

messages on November 7, 1998. However, after considering the entirety of the relationship between Complainant and Respondent, I agree with Respondent that Complainant is not credible in her contention that Respondent's conduct either before or after the filing of the informal complaint of sexual harassment was unwelcome.

For example, Complainant testified that she was not interested in a personal relationship with Respondent, and that she never paged Respondent to talk about personal matters until near the time of her termination. As mentioned above, Complainant's telephone records contradict her testimony in this regard because they show that Complainant in fact paged Respondent sixteen times in September of 1998 and seventeen times in October of 1998. Since Respondent was not Complainant's supervisor or co-worker in the production line, the sheer number of telephone calls not only suggests that the telephone calls were personal in nature, but also supports a finding that Complainant was not telling the truth about her relationship with Respondent.

Complainant's contention at the public hearing that she never visited parks or secluded areas with Respondent, and that Respondent was an unwelcome visitor outside her parent's home is also subject to doubt. Specifically, Respondent testified that he kissed Complainant several times during the month of August, 1998, and that Complainant took him to secluded areas of local parks on two occasions during the week of August 23, 1998. In denying that this ever occurred, Complainant stated that she was in the process of moving to her Bloomington apartment at that time. This too is inconsistent both with Complainant's telephone records which indicate that Complainant never moved to her Bloomington apartment until November of 1998, and with Gino Zabata's testimony that Complainant told him about being in a park with Respondent. Again, Complainant's inconsistency only gives credence to Respondent's claim that he

enjoyed some sort of romantic relationship with Complainant during her tenure at IPM, and that, as a result, his romantic overtures towards her were not unwelcome.

However, Complainant's initial participation in a romantic relationship with Respondent is not necessarily fatal to her sexual harassment claim if, as she claims, the record shows that she gave Respondent fair warning that she did not want to continue the relationship. (See, **Gelbach and State of Illinois, Department of Corrections, Logan Correctional Center**, \_\_\_ Ill. HRC Rep. \_\_\_ (1995SF0694, April 23, 1999) (Slip op. at p. 15).) Here, Complainant points to her informal complaint about Respondent's conduct as evidence that she did not welcome Respondent's conduct after the filing of her complaint. The problem with Complainant's argument, though, is that the filing of her informal complaint of sexual harassment did not give Respondent a clear notice that she no longer wanted to continue the relationship. Specifically, Complainant did not cooperate in IPM's investigation of her informal complaint, and Complainant indicated to Respondent in October of 1998 that she wanted to continue the relationship. Indeed, the telephone records showed that Complainant called Respondent's pager seventeen times in October of 1998, after Complainant had filed her informal complaint asserting harassment on the part of Respondent. As such, I can only conclude that Complainant was never serious about her informal complaint of sexual harassment, and that Complainant in fact continued to have a consensual relationship with Respondent throughout the month of October, 1998.

Admittedly, Respondent's sending of various romantic cards to Complainant in early November, 1998 presents a more supportive prong for Complainant's sexual harassment claim since Respondent's action represented the first serious violation by either party of the IPM directive to not have contact with each other. Indeed, Complainant's telephone records indicated that subsequent to the October 15, 1998

directive, Complainant called Respondent's pager only time on October 28, 1998. However, I cannot say that these romantic overtures were unwelcome to Complainant particularly where Complainant failed to object about Respondent's cards to IPM management, and where Complainant two weeks later resumed her practice of paging Respondent. Indeed, Zabata shed some light on Complainant's mind-set during this period of time when he testified to a November 18, 1998 conversation with Complainant during which Complainant devised a plan to have Respondent help her raise a \$2,500 bail bond that she would need on an existing arrest warrant.<sup>2</sup> Additionally, Complainant's request for \$187 from Respondent on November 22, 1998 does little to support her current contention that she did not want anything to do with Respondent.

Other facts in the record do not advance Complainant's sexual harassment claim. Specifically, Complainant conceded that she would not have lodged the September 30, 1998 informal complaint against Respondent were it not for the intervention of Zabata and Mary Price, her supervisor. Moreover, this reluctance extended to circumstances surrounding the filing of Complainant's Charge of Discrimination against Respondent with the Department of Human Rights. For example, Zabata testified that Complainant hesitated for a long period of time in naming Respondent to the Charge of Discrimination because, in Complainant's words, he was "a nice guy". (Tr. Vol. 1 pg. 147.) Such an observation hardly lends itself to a finding that Respondent's conduct toward Complainant was unwelcome. Too, the inclusion of Zabata as an additional perpetrator of sexual harassment in Complainant's sworn Charge of Discrimination, after Zabata had driven Complainant to the Department and encouraged her to file a Charge of Discrimination, speaks volumes about how

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<sup>2</sup> Indeed, in February of 1999, when Complainant was actually arrested, both Respondent and Zabata were asked to contribute to Complainant's bail bond fund.

Complainant was willing to do or say anything in exchange for the potential of financial gain.

Similarly, I find it significant that Complainant still desired to have some sort of a relationship with Respondent, even after she filed the Charge of Discrimination against him. Specifically, Respondent cited to a meeting that took place on February 8, 1999 at a McDonald's restaurant in Bloomington, Illinois where Complainant expressed a need for \$80.00, and Respondent eventually gave her the money by acceding to Complainant's request to stick the money down her pants. This encounter is telling because it clearly illustrates a familiarity and a closeness of a relationship that Complainant actually had with Respondent throughout her tenure at IPM. While Complainant's apparent financial motive for continuing her relationship with Respondent differed in nature from Respondent's motive in sending romantic overtures to her, I find that Respondent's conduct towards her was nevertheless not unwelcome since she continued to use Respondent's romantic overtures as a means of obtaining her own personal and financial goals. In this sense, Respondent's conduct was clearly "invited" as that term was contemplated by the Commission in Gelbach.

Finally, before leaving the issue of whether Complainant subjectively viewed Respondent's conduct to be unwelcome, I note Complainant's contention at the public hearing that she left IPM because she could no longer tolerate Respondent's conduct. The problem with this contention is that Complainant conceded that Respondent did not contact her at the workplace after November 7, 1998. Thus, I am hard-pressed to determine what caused Complainant to suddenly leave IPM in early January of 1999, other than Complainant's statement to Price that she needed more money. Indeed, Complainant's extensive telephone contact with Respondent at the end of December of 1998 and throughout January of 1999 only reinforces the notion that there was nothing

that Respondent did to cause her to submit her notice of termination. Accordingly, I find that Complainant has failed to establish a *prima facie* case of sexual harassment since she was unable to show by a preponderance of the evidence that she subjectively believed Respondent's conduct towards her was unwelcome.

**Recommendation**

For all of the above reasons, it is recommended that the Complaint and the underlying Charge of Discrimination by Teresa Shelton be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

BY: \_\_\_\_\_  
MICHAEL R. ROBINSON  
Administrative Law Judge  
Administrative Law Section

ENTERED THE 30<sup>TH</sup> DAY OF JANUARY, 2001